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ABSTRACT

This manual is intended to guide school administrators, teachers, school psychologists, and others with the design and implementation of interim alternative education settings (IAES) in compliance with the Individuals with Disabilities Education Act (IDEA) as amended in 1997. Chapter 1 discusses how the IAES evolved as a means of balancing the right of all children to safe schools and the rights of children with disabilities to a free and appropriate public education. Chapter 2 reviews the legal provisions pertaining to IAES including removal from a student's current placement for disciplinary reasons, especially in cases involving weapons or drugs, and requirements concerning functional behavioral assessment and intervention. Chapter 3 proposes "best practices" for IAES based on the disciplines of general education, educational psychology, school psychology, and special education. A final section identifies future legal and educational challenges in the development and implementation of the IAES concept. A list of agency and organizational resources is attached. Two appendices present: (1) three case studies involving placements in IAES that exemplify the application of legal principles; and (2) the text of IDEA '97 regulations pertaining to IAES. (Contains 47 references.) (DB)

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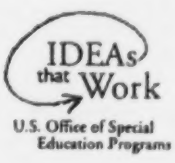

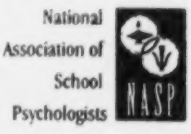

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Preface

The term "Interim Alternative Education Setting" (IAES) is relatively new to special education, first appearing in federal law in the 1994 Jeffords Amendments to the Individuals with Disabilities Education Act (IDEA). Due to its recent inclusion into federal law, few resources are available to help guide school administrators, teachers, school psychologists and other educators with the design and implementation of IAESs. This document was developed to help fill this void.

In Chapter 1, we present a brief discussion of how the IAES evolved as a means of balancing the right of all children to safe schools with the right of children with disabilities to a free and appropriate public education. General guidelines for IAESs also are presented in this chapter.

In Chapter 2, we review the legal provisions pertaining to IAESs. We begin with a review of those provisions that explain when removal from a student's current placement for disciplinary reasons does, and does not, constitute a change in placement. As is the focus of the IAES provisions in IDEA '97, we focus on cases involving possession of weapons or drugs, sale or solicitation of the sale of a controlled substance, or the threat of serious injury to self or others. Next, we review requirements for placing a student in an IAES, including the requirements of functional behavioral assessment and behavioral intervention plans.

In Chapter 3, we propose "best practices" for IAESs. As one should expect given the recent adoption of the IAES requirements, there is little, if any, empirical research on IAESs per se. However, the disciplines of general education, educational psychology, school psychology, and special education have provided educators with a wealth of knowledge that can be applied to the development and implementation of IAESs. In this chapter we present a brief overview of such knowledge while emphasizing the importance of implementing research-based interventions linked to assessment.

Finally, from one of the authors, we present three case studies involving placements in an IAES. These case studies are included to exemplify the application of the legal provisions presented in Chapter 2 (see Appendix A).

This document evolved from a lengthy process that began with study, discussion, and debate among a planning committee consisting of George Bear, Sue Burkholder, Kathryn Carroll, and Mary Quinn. Drafts were reviewed by a panel of 18 reviewers which included administrators of IAESs, researchers, and active members of the National Association of School Psychologists (NASP) and the Council for Exceptional Children (CEC). The final draft was reviewed by the U.S. Department of Education, Office of Special Education Programs. Throughout the development of this document, guidance and assistance were provided by Susan Gorin, NASP Executive Director, Ted Feinberg, NASP Assistant Executive Director, Larry Sullivan, former NASP Assistant

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Chapter 1

Interim Alternative Education Settings: Background and Functions

Background and Functions

Although the term "interim alternative educational setting" (IAES) and its legal provisions are relatively new to educators, issues concerning the need for IAESs have plagued educators since the onset of public education. Educators have always struggled with how to respond to students who present discipline problems, especially serious acts of misconduct (Crews & Counts, 1997). In recent years many schools have responded to a perceived increase in school violence and drug possession with the adoption of "zero tolerance" policies. Zero tolerance policies consist of policies "that punish all offenses severely, no matter how minor" (Skiba & Peterson, 1999, p. 373). Their primary purpose is to protect the safety of all students and to maintain an environment conducive to learning. Zero tolerance policies entail a variety of consequences, including in-school suspension, time-out, placement in an alternative program, and automatic expulsion. Among these consequences, automatic expulsion has generated the greatest controversy. This is true because expulsion results in the denial of educational services, which, in turn, places those who are expelled at considerable risk for a variety of negative outcomes. These negative outcomes include increased criminal activity, unemployment, substance abuse, and social maladjustment (Finn, 1989; Rossi, 1995). Such outcomes impact not only the individual student, but also society in general.

Shortly before the passage of the 1997 Amendments to the Individuals with Disabilities Education Act (IDEA '97), it became clear to educators

and legislators that a zero tolerance policy of school expulsion was in direct conflict with IDEA's guarantee of a free appropriate public education (FAPE) for IDEA eligible students with disabilities. This guarantee includes those students with disabilities who possess weapons or illegal drugs or who are a serious threat to themselves or others.

The concept of IAES evolved as a temporary solution to the above dilemma and as a way to balance the rights of students with disabilities to an appropriate education, as determined by his or her IEP team, with the right of all students to safe schools. The provision of the IAES in IDEA '97 allows school personnel to treat certain categories of students with disabilities the same as students without disabilities with respect to their removal from a classroom without parent permission – with restrictions. It is important to note that school personnel may order a change in placement of a child with a disability to an appropriate IAES for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if the child possesses a weapon on school premises or at a school function under the jurisdiction of a State or a local educational agency; or the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency (34 CFR §300.520 (a)(2)).

Further, a due process hearing officer may order a change in the placement of a child with a disability to an appropriate IAES for not more than 45 days if the hearing officer, in an expedited due process hearing, determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is likely to result in injury to the child or to others; and considers the appropriateness of the child's current placement; and considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and determines that the IAES that is proposed by school personnel who have consulted with the child's special education teacher meets the following requirements (34 CFR §300.522 (a)): Any IAES must be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and include services and modifications to address the behavior that are designed to prevent the behavior from recurring (34 CFR §300.522). It is important to note that the IAES for students with disabilities who have committed the weapons or drug offenses described above must be determined by the IEP team (34 CFR §300.522 (a)).

Guiding Principles for IAESs

Although IDEA '97 and its respective federal regulations present legal requirements pertaining to the placement of students with disabilities into an IAES, the regulations do not define or describe programmatic structures or recommended practices that should constitute an IAES. However, several key principles pertaining to program-

matic structures and practices can be identified by virtue of the term IAES. These key principles, especially when combined with current "best practices" in the fields of special education, alternative education, general education, and school psychology, provide educators with basic guidelines that should enhance the appropriateness and effectiveness of IAES programs. In Chapter 3 we propose best practices for IAESs. In this chapter we briefly review three principles that should help guide such best practices. These principles are implicit in the three modifiers of "setting" in the term IAES — *interim*, *alternative*, and *educational*.

IAESs are Interim settings. IAESs are intended to serve *short-term, transitional* purposes. With few exceptions, IAESs serve as settings in which students with disabilities are placed *pending* either a return to the student's current educational placement or a change in educational placement. Placement in an IAES may range from 1 to 45 calendar days. Given the explicit time restrictions in IDEA '97, it is clear that IAESs are not intended to serve as educational placements in which the *long-term* educational and mental health needs of students are adequately met. However, planning and progress toward this goal must *begin* during the interim alternative educational placement.

Exceptions to the standard 45-day interim placement may occur. An IAES placement *may* extend beyond 45 days, under four circumstances (34 CFR §§300.121; 300.520 – 300.524):

1. when parents and school personnel agree about a proposed changed placement for disciplinary reasons. In such cases, the rules concerning the amount of time that a child with a disability may be removed from his or her educational placement do not have to be used. (Note, however, that services must be provided to the extent necessary to enable the child to progress appropriately in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP). This would include cases in which the IEP team, including the parent, follows established IDEA procedures and changes the student's placement to a setting that serves as an IAES, such as an alternative school;
2. when it has been shown that the behavior subject to the disciplinary action is not a manifestation of the student's disability;
3. when a hearing officer authorizes a second period, not to exceed 45 days; and
4. when a judge orders a change in educational placement. Legal provisions that govern the latter two circumstances are presented in Chapter 2.

The time constraints inherent in the interim placement (1 to 45 calendar days) greatly limit the degree to which long-term educational and mental health needs can be addressed *during* the student's stay in the IAES. Nevertheless, such time constraints shall not preclude the provision of services designed to meet the student's immediate educational needs, including mental health needs, as appropriate. Emphasis, however, should be placed on planning for the student's return to the previous educational setting or to another educational placement. This would include the development of behavioral intervention plans designed to prevent misbehavior from recurring.

An IAES provides an alternative to other actions.

In light of the rapidly growing number of alternative education schools in the nation, it is likely that many alternative schools will be called on to serve as both short-term and long-term placements for students with and without disabilities. Although the distinction between the two placements often will be blurred, the need to focus on the student's movement from the alternative school remains clear, especially when the length of the stay substantially limits the delivery of direct services.

An IAES provides an Alternative to other actions. With respect to the three serious acts of misconduct delineated in IDEA '97 (weapons, drugs/controlled substances, and injurious behavior), the IAES is an alternative to several options, including (a) having the student "stay put" in his or her current educational placement when issues of safety and order are valid concerns, and (b) removing the student for an extended period of time (i.e., changing his or her educational placement) without following appropriate procedures.

In many cases the most appropriate alternative would be to seek mediation, and to do so immediately, with the goal of reaching agreement with the parents to a change in educational placement to a more appropriate setting. It is important to point out that mediation is an entirely voluntary option to resolve disputes about any aspect of special education and related services. If mediation fails, the school district can request a due process hearing or a court order to change the student's placement. Such situations should be rare. If a school or the parents seek mediation, due process, or a court order as an alternative to an IAES placement, it would seem wise to do so *before* the number of days suspended approaches the 10 consecutive school day limit. This would allow sufficient school time to pursue a change in placement, where appropriate, without placing a student in an IAES.

EXAMPLE:

Mark, a student with a learning disability in a regular education classroom, is suspended for two school days in September for fighting and is suspended again for three school days in October for cursing and threatening a teacher. Multiple preventive and corrective interventions are implemented based on a determination made by Mark's IEP team, but are ineffective. It is at this point that a change in Mark's current educational placement should be considered (together with a functional behavioral assessment and implementation of a behavioral intervention plan). If a change in current educational placement is determined to be appropriate by the IEP team, but the parent refuses, mediation should be made available. Waiting until Mark has been suspended for a total of 10 school days may substantially limit administrative alternatives to placement in an IAES.

IAESs are Educational settings. Typically, the goals of removing a student from his or her current educational placement following a major infraction of school rules are to impose consequences for the students' actions and to protect the safety of others. Both may be worthwhile goals. IDEA '97 states that IAESs must serve two further

goals: (1) to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP and to provide services and modifications that will enable the student to meet the goals set out in that IEP, and (2) to address the behavior that led to the IAES placement in order to prevent the behavior from recurring (34 CFR §300.522). Thus, the educational function of IAESs is a broad one, encompassing the full educational program, including behavioral needs.

During the time the student is placed in the IAES for weapons, drugs, or the threat of injurious behavior, the focus should be twofold: (a) reviewing and modifying, as necessary, the student's current behavioral intervention plan, or developing a new behavioral intervention plan to help prevent the conduct problems from recurring after the student leaves the IAES, and (b) continuing the student's progress toward meeting his/her IEP goals, including progress in the general curriculum and the continuation of services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP.

What is an Appropriate Setting?

Because schools are provided considerable leeway in creating IAESs, many existing programs are likely to function as IAESs (i.e., schools within-a-school, intervention resource rooms, in-school suspension rooms, alternative classrooms, mental health treatment facilities, homebound placement). As will be seen in Chapter 2, decisions regarding the appropriateness of a setting must be made on a case-by-case basis by school personnel, the student's IEP team, and may also be made by a hearing officer or a court.

From a legal perspective, a setting would be inappropriate if it fails to provide the programs necessary to implement the student's IEP and behavioral intervention plan and to enable the student to continue to progress in the general curriculum. From a best practices perspective, a setting would also be deemed inappropriate if it (a) relies upon intervention programs that research has shown to be ineffective or (b) precludes the implementation of effective intervention programs. Included in the first category would be alternative settings that adopt programs that are primarily punitive and non-rehabilitative. This would include "boot camps" and "last chance alternative schools" (Raywid, 1994) that employ a harsh authoritarian style of discipline and external control to "teach" students not to misbehave. Strategies of choice in these settings are those that research has shown to be largely ineffective, especially in preventing future behavior problems among antisocial youth. Such strategies consist of lecturing, fear arousal, and teaching social skills directly without planning for generalization and internalization of such skills (Gottfredson, 1996).

In general, homebound instruction also falls in this category of settings — settings that preclude the implementation of effective intervention programs. This is because homebound instruction often precludes the adequate implementation of many pro-

grams and strategies that have been shown to be effective in addressing the academic, social, and emotional needs of students. These programs and strategies include cooperative learning, social decision-making, peer modeling, close relations with at least one member of the school staff, and the practice of positive social skills among peers. Other settings, such as many mental health treatment settings, are also likely to fall under this category. This is particularly true in those treatment settings that are staffed by personnel with little or no experience in special education. It also includes settings in which the primary focus is on "fixing the child" during the student's stay while providing little or no follow-up support and consultative services.

Perhaps the greatest limitation of homebound instruction and many traditional mental health settings is the failure to address multiple factors that contribute to the student's behavior problems. This is especially true with respect to those factors that lie outside of the individual child and the alternative setting. These factors are likely to continue to influence the student's behavior upon leaving the setting. They include the classroom, school, peer, family, and community factors. Although this limitation can be found in *any* IAES or service model, the likelihood of its occurrence is much greater among programs that are designed primarily to punish, exclude, or "fix the child."

It should be noted that homebound and traditional mental health programs *may* be quite appropriate for an individual child with a disability. For example, a homebound may be appropriate when placement is short-term, especially when the home conditions are conducive to behavioral change. When such a model exists as the only IAES option, however, inappropriate educational placements may result.

Summary

IAESs provide educators with a means by which they can balance the right of all students to safe and orderly schools with the right of students with disabilities who violate school rules to a free appropriate education consistent with their IEPs. IAESs are intended to be short-term settings that serve as alternatives to other solutions, such as expulsion. IAESs should provide services that address not only the *current* educational, social, and emotional needs of students but also their *future* needs as determined by the student's IEP team. That is, they should strive to prevent behavior problems from recurring.

IEP teams should avoid developing and selecting programs of *limited focus, limited scope, and limited transitional planning*. In light of the IAES provisions in IDEA '97 and current best practices in the related areas of education and psychology, it is critical that IAESs provide a continuation of general education and IEP-specified services while focusing their efforts on preventing behavior problems from recurring. Such programs would provide, directly or indirectly, comprehensive special education and related services that target the student's academic, social, and emotional needs. Emphasis would be on the importance of planning and follow-up consultative services. Best practices in providing remedial education and consultative services are delineated in Chapter 3.

2

Chapter 2

Legal Provisions Pertaining to IAESs

Regulatory provisions pertaining to the IAES and the discipline of students with disabilities are located in 34 CFR §§300.519-300.529 of the IDEA '97 implementing regulations. Parents and professionals who make decisions regarding the discipline of students with disabilities should familiarize themselves with these sections. In this chapter we highlight only those regulations that apply to disciplinary decisions involving IAES placements.

Although §§300.519 and 300.520(a) do not directly discuss the IAES, we begin with these two sections because they explain when removal from the student's current placement for disciplinary reasons does, and does not, constitute a change in placement.

Disciplinary Removals that Do Not Constitute a Change in Placement

The IDEA regulations (34 CFR §300.520) state that when a student with a disability violates any school rule, that student can be removed for the same amount of time as a student without a disability, provided that the removal is for no more than 10 consecutive school days in the same school year. This type of removal does not constitute a change in placement. Additional removals may occur as long as they are not for more than 10 consecutive school days or they do not constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of time the student is removed, and the proximity of removals to one another. Typically, these removals are for one or several days at a

time and entail the placement of the student in an in-school suspension, out-of-school suspension, or in an IAES. The IEP team must make certain that these removals do not, however, constitute a change in placement, as described below and stated in §300.519.

It is important to remember that, once a student with a disability has been removed from his or her current educational placement for more than 10 school days in the same school year, the public agency must provide a free appropriate public education (FAPE), as described in §300.121 (d). When this is the case, on the 11th day of removal during the same school year, school personnel, in consultation with the student's special education teacher, must determine "... whether and the extent to which services are needed to enable the student to make appropriate educational progress in the general curriculum and toward the goals of the child's IEP" (*Federal Register*, vol. 64, no. 48 March 12, 1999, p. 12554). The type and degree of services that are needed have to be determined on a case-by-case basis. In essence, whereas students with disabilities can be suspended for more than 10 school days in a school year, they must continue to receive educational services consistent with the student's IEP.

If, however, it is determined that the behavior is not a manifestation of the student's disability and the removal constitutes a change in placement, the IEP team makes the determination regarding the type and extent of services that the student will need. These regulations give school officials the authority to deal with minor school infractions while at the same time ensuring that the student with a disability continues to receive FAPE consistent with that student's IEP.

Disciplinary Removals that Constitute a Change in Placement

Removal constitutes a change in placement if:

- The removal is for more than 10 consecutive school days; or
- The student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

Whether or not a disciplinary removal is indeed a change of placement must be determined using the above guidelines. This determination is made by the student's IEP team. This, of course, means that such a decision must be made on a case-by-case basis.

Change of Placements: Cases Involving Weapons, Drugs and Controlled Substances, or the Threat of Serious Injurious Behavior

Although IDEA does not preclude school personnel from placing students in IAESs for minor infractions of school rules under the 10 consecutive school days rule, the

provisions in IDEA '97 that directly mention IAESs pertain to more serious behaviors that justify more extended stays. Specifically, more extended stays are allowed in cases involving weapons, drugs and controlled substances, or the threat of serious injurious behavior, as described below.

Weapons, drugs, and controlled substances.[1] IDEA '97 allows school personnel to place a student with a disability in an IAES for the same amount of time a student without a disability would be placed as long as the placement does not exceed 45 calendar days. This is true in the following two circumstances, as described in 20 USC1415(k) (1) (A) (ii) (I) and §300.520(a)(2)(i)and (ii):

- The child carries or possesses a weapon to or at school or school premises, or to or at a school function under the jurisdiction of a State or local educational agency: or
- The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

There are several issues that often confuse people. The regulations specify that a student with a disability can be sent to an IAES for up to 45 calendar days. This means that it can be less than 45 days if that is how long a student without a disability would be removed from school for the same behavior. It also is important to note that the regulations specify calendar days and not school or business days for IAES placements. This means that if a student with a disability is sent to an IAES for 30 days and during those 30 days the school has a week-long recess, the time that the students are out of school counts toward the 30 days. Although the decision to place the student in an IAES is made by "school personnel," the IAES itself, or where the student will be placed, is to be determined by the IEP team.

Threat of serious injurious behavior. Section 300.521 states that a *hearing officer* also has the power to remove a student with a disability to an IAES for not more than 45 calendar days if in an expedited due process hearing the hearing the hearing officer:

- Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is likely to result in injury to the student or to others;
- Considers the appropriateness of the child's current placement;
- Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

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[1]*The terms weapon and controlled substance are defined in other legislation. The definition of weapon can be found under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. The definition of controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC 812(c)).*

- Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher meets the requirements of §300.522(b).

Determining Which IAES is Appropriate

In cases involving weapons or drugs/controlled substances, the appropriate IAES is determined by the IEP team. In cases involving the threat of injurious behavior, the IAES is proposed by school personnel in consultation with the child's special education teacher and must be approved by the hearing officer. As noted in Chapter 1, IDEA '97 does not stipulate that the IAES has to be a special school or even a setting that is separate from the traditional public school. It only stipulates what the setting must be able to offer the child. Section 300.522 states that an IAES must:

- Enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP; and
- Include services and modifications to address the behavior (i.e., possession of a weapon or drugs, sale or solicitation of the sale of a controlled substance, or the threat of injurious behavior) and are designed to prevent the behavior from recurring.

Extended Placements in IAESs

Placement can not be more than 45 calendar days in cases involving weapons, drugs or controlled substances, or when maintaining the current placement is substantially likely to result in injury to the child or to others. Placement in an IAES can be for more than 45 days under the following circumstances (34 CFR §§300.121; 300.520 – 300.524):

1. The child's parents and school personnel agree to a proposed change of placement for disciplinary reasons. In such cases, the rules concerning the amount of time that a child with a disability may be removed from his or her educational placement do not have to be used. However, services must be provided to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. If, for example, the student's parents and school officials agree to a long-term placement in the setting that serves as an IAES (e.g., an alternative school), that placement can be for more than 45 days. It is important to note that this circumstance would be considered a change in placement, rather than placement in an IAES, and should be accomplished through the IEP process.
2. A judge orders a change in placement of a student.
3. After the student has already been placed in the IAES, a hearing officer determines that returning a student to his or her educational setting is likely to result in injury to the student or to others. The hearing officer has the authority to extend the student's placement in the IAES up to 45 calendar days. In cases involving a hearing officer, extensions are to be in 45 calendar day increments. It would probably

be considered wise for the IEP team to meet to determine a more appropriate long-term placement, if the IAES is not having the desired effects on behavior.

4. It is determined during the manifestation determination meeting that the behavior that initiated the removal to the IAES was not a manifestation of the student's disability. In such cases the student can be removed for the same amount of time that a student without a disability would be removed for the same behavior. However, after a student with a disability has been removed from his or her current placement for more than 10 school days in the same school year, during subsequent days of removal the public agency must provide services to the extent required under §300.121(d).

Functional Behavioral Assessment and Behavioral Intervention Plans

IEP teams are encouraged to consider behavioral implications when developing the IEP of *every* student with a disability. The provisions of IDEA now call for IEP teams to be proactive during IEP meetings when designing programs for those children whose behavior impedes their learning or that of others. In fact, IEP teams are directed to ".... consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior" (34 CFR §300.346 (a)(2)(i)). This requirement impacts on the duties of the child's IEP team and is particularly important if a child is removed from his or her educational setting for more than 10 consecutive school days.

If a student with a disability is removed for disciplinary reasons for more than 10 school days in a school year, or if a removal for weapons, drugs, or controlled substance constitutes a change in placement or if any other removal constitutes a change of placement under 34 CFR §300.519, the IEP team must meet either before or not later than 10 business days after instituting that removal. The agenda for those meetings is determined by the following guidelines:

- If the local education agency (LEA) had not previously conducted a functional behavioral assessment and implemented a behavioral intervention plan, the IEP team must meet to develop an assessment plan. Following the development of the assessment plan and the collection of related data, the team should meet as soon as practicable to develop the plan and begin implementing appropriate behavioral interventions that address the behavior.
- If the student already has a behavioral intervention plan, the team meets to review and modify the plan and its implementation, as necessary, to address the behavior.
- If a student who has already been removed for 10 school days in a school year and already has a behavior intervention plan is subsequently subjected to another removal (that does not constitute a change in placement), the IEP team shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the IEP team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

Students Not Yet Determined Eligible for Special Education and Related Services

The IDEA regulations may apply to children who have not yet been determined eligible for special education and related services if the LEA had knowledge that the child had a disability before the behavior that precipitated the disciplinary action occurred. An LEA must be deemed to have knowledge that a child is a child with a disability if:

- The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;
- The behavior or performance of the child demonstrates the need for these services, in accordance with 34 CFR §300.7 (i.e., the child has mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and because of this disability is in need of special education and related services);
- The parent of the child has requested an evaluation of the child pursuant to 34 CFR §§300.530-300.536 (i.e., established procedures for evaluation and determination of eligibility); or
- The teacher of the child, or other personnel of the LEA, has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel in accordance with the agency's established child find or special education referral system (34 CFR §300.527(b)(1)-(4)).

It is important to note, however, that the public agency is not considered to have knowledge of a disability if, as a result of receiving notification of a suspected disability (as is described in the above paragraphs) the agency either: (1) conducted an evaluation and determined that the child did not have a disability (in accordance with the IDEA), or (2) determined that an evaluation was not necessary. In either of these situations, the public agency must provide notice to parents of its determination.

Referrals to and Action by Law Enforcement and Judicial Authorities

Many of the behaviors that constitute a change in placement to an IAES are also considered violations of federal or state law. Section 300.529 of the regulations states that there is nothing that prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes by a child with disability. It does, however, stipulate that a copy of the child's special education and disciplinary records may be transmitted to the appropriate authorities for consideration when reporting a crime. This transmittal can be accomplished only to the extent that it is permitted by the Family Educational Rights and Privacy Act.

In this section we have discussed the major regulatory issues surrounding the placement of students with disabilities in interim alternative educational settings. The regulations are summarized in Table 1. The reader is again encouraged to read the IDEA and its regulations directly for more details regarding these topics. Likewise, readers should become familiar with state and local education agency regulations.

In Appendix A, three case studies are presented that show how the regulations were applied in an alternative school when dealing with a student with emotional disturbance who brought a weapon to school (Case Study #1: Scott), a student with a learning disability who distributed drugs (Case Study #2: Jennifer), and a student with ADHD who threatened suicide (Case Study #3: Ricky). Appendix B presents the regulations in IDEA '97 pertaining to issues of discipline and students with disabilities.

Table 1

Summary of IDEA '97 Regulations Pertaining to Interim Alternative Educational Settings

	Drugs/Controlled Substance or Weapon	Serious Injurious Behavior
Who has the authority to remove the child?	School Personnel	Hearing Officer
How long can a child be removed if it is determined that the behavior is a manifestation of their disability?	The same amount of time that a child without a disability would be removed, but no more than 45 calendar days. The IAES placement can be extended for up to 45 days at a time by a hearing officer.	The child can be removed for up to 45 calendar days. The hearing officer can extend the placement in not more than 45 calendar day increments.
How long can a child be removed if it is determined that the behavior is not a manifestation of their disability?	The child can be removed for the same amount of time as a child without a disability would be removed for the same behavior.	The child can be removed for the same amount of time as a child without a disability would be removed for the same behavior.
Does the child receive FAPE in the IAES?	Yes	Yes
Does the child receive FAPE if removed for behavior that is not a manifestation of his or her disability?	Yes	Yes
Who determines the educational services for a child in an IAES?	The child's IEP team.	The hearing officer determines if the services proposed by school personnel, who have consulted with the child's special education teacher, are appropriate.
Who determines the educational services when the child is removed for behavior that is not a manifestation of the child's disability?	The child's IEP team.	The child's IEP team.

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Chapter 3

Best Practices for IAESs

In this chapter, "best practices" for IAESs, based on research in special education, alternative education, general education, and school psychology, are summarized. It is proposed that development and implementation of IAES programs be guided by (a) the general characteristics of effective educational programs and (b) research-based interventions, linked to assessment, that target social-emotional and academic-vocational behaviors.

General Characteristics of Effective Educational Programs

Effective educational programs for students with conduct problems and students who are at-risk for dropping out of school share many characteristics. For heuristic purposes we group these characteristics into two broad categories: (a) school-based supports and (b) networks of additional supports and services.

School-Based Supports

At-risk students often feel alienated in their schools. They perceive teachers and administrators as non-caring, peers as rejecting, and academic tasks as too difficult, non-stimulating, or irrelevant to any vocational plans they may have (Kortering, Hess, & Braziel, 1997). Research shows that self-perceptions of alienation and lack of social support are associated with problems of self-concept, motivation, academic achievement, and social-emotional adjustment (Harter, 1999).

Research also shows that school personnel can make a difference in students' perceptions of school. For example, Gottfredson (1987)

found that alternative programs that emphasize social support and student attachment to schools are more effective than those that emphasize punishment and control. Punishment and control-oriented programs were shown to have a negative impact on student attitudes toward school *and* on delinquent behavior. They produced only temporary improvements in academic performance. Similarly, in a review of 14 alternative schools, Wehlage (1991) concluded that the key characteristic of effective programs was a supportive learning environment, which he referred to as a "community of support." Fortunately, it appears that many alternative schools are successful in providing a community of support. In a recent review of 57 studies of alternative schools, researchers concluded that the most consistent positive feature of alternative schools is that students view them more favorably than traditional schools (Cox, Davidson, & Bynum, 1995).

Researchers and authorities in alternative education and special education have identified general characteristics of effective programs that foster an atmosphere characterized by a "community of support" and which are effective in addressing the needs of many students with chronic behavior problems (Bear, 1999; Cotton & Wikelund, 1996; Gottfredson, 1997; Kellmayer, 1996; Kershaw & Blank, 1993; Quinn & Rutherford, 1998; Raywid, 1994; Wehlage, 1991). These characteristics are listed below:

1. **Qualified teachers and support staff who volunteer to work with challenging students.** The ratio of teachers and staff to students is low, allowing for frequent individual and small group activities. Teachers and staff are well trained and skilled in a broad range of competencies for promoting academic-vocational and social-emotional development. Training includes special education, classroom management, crisis management, conflict resolution, and collaborative problem-solving consultation. Staff development is ongoing and based on the needs of students and staff. A culturally diverse staff is employed, especially in alternative educational programs serving culturally diverse populations.

> *One implication of our research is that schools are successful with at-risk students when they accept a proactive responsibility for educating these youth. This responsibility derives in part from teacher culture characterized by a moral obligation to serve youth who other teachers were likely to reject as unworthy. This form of "professional accountability" was sustained by certain attitudes and practices that fostered a positive school culture and caring approach, thereby making student success more likely. We strongly believe that it was the strength of teachers' sense of professional accountability that was the fundamental strength of these schools. Whatever their technical features, schools without this basic commitment will remain ineffective with at-risk youth.*
> *(Wehlage, 1991, p. 16)*

2. **Flexibility in program management, decision-making, and role functions.** A defining characteristic of "alternative" and "special" education is the use of nontraditional methods of education. Implementation of nontraditional methods requires that administrators and staff of alternative educational programs be granted the autonomy to make decisions that depart from "standard" district-level policies and practices. Where appropriate, and not restricted by a student's IEP, this includes the flexibility to make adaptations in curriculum, instruction, school rules, and behavior management practices. For example, this may include the use of highly structured level systems as commonly found in alternative education programs. It is important to remember, however, that the use of non-traditional methods should NOT include methods that are not supported by research.

   Finally, effective programs include flexible and expanded roles for teachers and staff. For example, teachers function as instructors, advisors, mentors, and counselors. Likewise, teachers actively participate in decisions pertaining to the educational and mental health needs of students. A small, flexible staff fosters communication and collaborative problem solving during the planning and implementation of interventions.

3. **Sufficient funding and resources.** Interim alternative schools are costly, but less costly than the negative outcomes associated with not meeting the needs of students with serious behavior problems. Sufficient funding and resources provide a low student-teacher ratio, ample support staff and training, learning materials, computer technology, and a physical plant that is conducive to learning.

4. **Sensitivity to individual and cultural differences.** Alternative educational program staff are aware, for example, that behavior and academic problems often emerge when the culture and norms of the student's school differ from those of the student's home or community (Delpit, 1995; McIntyre, 1996).

5. **Clear individual and program goals.** Effective programs set clear expectations and goals pertaining to student conduct and achievement. Expectations and standards are high, yet realistic, and target both short- and long-term outcomes.

6. **On-site counseling services.** School psychologists, school counselors, social workers and other qualified support staff are available to provide on-site counseling services to students. In addition, teachers are trained to counsel students, as appropriate, for the purpose of helping to develop close, trusting teacher-student relationships and to meet the counseling needs of students when other staff members are not available.

7. **A case management approach to student services.** A case management team, multidisciplinary in its composition, assists each student. One team member is assigned primary responsibility for monitoring each individual student's progress.

8. **Program evaluation.** Evaluation is both formative (ongoing) and summative. It addresses the achievement of individual students as well as the program's overall goals and objectives. At the individual level, the staff evaluates the (a) ongoing progress of each student, including the need for changes in interventions and (b) the attainment of important short- and long-term academic-vocational and social-emotional outcomes. At the program level, evaluation includes both qualitative measures (e.g., the presence, or absence, of program characteristics listed here) and quantitative measures (e.g., group data on the attainment of important outcomes).

All alternative school faculty members mentioned in one way or another that they believe it is more important to base their expectations for student performance on students' abilities and aptitudes than on standards. They also noted that their primary expectations were for social and emotional development, followed by academic improvement.
(Kershaw & Blank, 1993)

9. **Research-supported interventions.** Interventions, targeting social-emotional and academic-vocational behavior, are grounded in research and theory supporting their use.

Networks of Additional Supports and Services

Supports must extend beyond the school. In recognition that behavior is explained by an interaction of multiple factors, including intra-individual, school, home, peer, and community factors, it is well understood among mental health providers that comprehensive, broad-based supports and services are necessary in the treatment of students with chronic conduct problems (Dwyer & Gorin, 1996; Paavola et al. 1996; Skiba, Polsgrove, & Nasstrom, 1996). Indeed, with respect to the treatment of children with chronic conduct problems, *it is very unlikely that school-based programs will have much lasting effect unless the treatment includes a strong parent component* (Bear, Furlong, Webster-Stratton, & Rhee, 2000). Rarely can alternative educational programs alone provide such comprehensive services. Thus, it is critical that alternative educational programs, including IAESs, have in place interagency networks or "wrap around services" that provide a system of support that is built upon the strengths of individual students, their families, and the community. Included, for example, would be a full range of student-centered and family-centered services, such as medical services, social services, vocational training, employment/vocational individual and family therapy, criminal justice services, and mentoring by community/business volunteers.

Research-Based Interventions, Linked to Assessment, that Target Social-Emotional and Academic-Vocational Behaviors

Within the context of providing a comprehensive system of support, it is important that IAESs develop and implement specific, research-supported interventions. These interventions should be linked to assessment that focuses on the ongoing gathering and analysis of data. Such data should be of practical value to the teachers and staff of the IAES as well as to teachers and staff of the setting to which the student is later placed. Likewise, the data should be of value to the IEP team and to a hearing officer, where appropriate. Data would be used for planning, implementing, and evaluating interventions that address the student's social-emotional and academic-vocational educational needs.

General Best Practices in Assessment

In reviewing and collecting data, general best practices in assessment should apply. As such, assessment should include the following (NASP/NASDSE/OSEP, 1994):

- *Multiple tools and strategies* to assess the student's functioning across *multiple settings* (e.g., school, home, community settings; supervised and unsupervised settings; different teachers and classes; pre-IAES, IAES, and post-IAES settings).
- *Multiple sources* of information, including parents, teachers, peers, the student, and archival records.

- *Multiple factors* that influence the student's behavior, including factors both external and internal to the student.
- *Technically sound instruments* that have been validated for the specific purposes for which they are used.
- *Responsiveness to additional legal and ethical guidelines*, including non-discriminatory assessment and the administration of measures by trained and knowledgeable personnel.
- *A problem solving approach to assessment* in which (a) the student's behavior problems are clearly defined, (b) multiple factors contributing to the student's behavior are analyzed, (c) interventions linked to the above results are developed and implemented, and (d) the interventions are evaluated and modified when necessary.

Assessment Issues Specific to the Disciplinary Provisions in IDEA '97

In addition to the above general best practices in assessment, the following issues related to assessment and the disciplinary provisions of IDEA '97 should be addressed, where appropriate:

Behavioral manifestation determination. A behavioral manifestation determination needs to be conducted immediately, if possible, but no later than 10 school days after the date on which the decision to take action is made. Reviewing the relationship between the student's disability and the behavior subject to the disciplinary action is the responsibility of the IEP team and "other qualified personnel." Depending on several factors, such as the location of the IAES, staff qualifications and general preferences of the District, the IAES staff may be helpful in the review. In carrying out a review, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team and other qualified personnel first consider, in terms of the behavior subject to disciplinary action, all relevant information, including evaluation and diagnostic results (including observations of the child and the results or other relevant information supplied by the parents of the child). The IEP team would then determine that, in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and that the special education services, supplementary aids and services, the child's IEP and placement, and the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

Functional behavioral assessment (FBA). IDEA '97 does not define FBA, or its components. Consequently, conflicting perspectives on the topic have emerged, with some researchers interpreting the concept narrowly (i.e., focusing only on environmental causes of behavior) and others interpreting the concept broadly (i.e., examining multiple factors). Regardless of one's interpretation of the concept, it is clear that the purpose of the FBA is to identify factors that explain *why* a student's behavior occurs (e.g., what function the behavior serves and what influences the occurrence of the behavior). The ultimate goal of a FBA is to develop practical interventions that are based directly on assessment results.

Functional behavioral assessment is not new to school psychology and special education. It is already embedded in popular problem-solving models of assessment and consultation. When viewed from a narrow perspective, FBA consists of those components of the problem-solving approach that focus on environmental antecedents and consequences of behavior. When viewed more broadly, FBA is synonymous with the problem-solving approach shown in Table 2. Using this approach, a variety of factors can be targeted for intervention, including factors commonly considered environmental (antecedents and consequences), behavioral (e.g., social skill deficits), social-cognitive (e.g., attributions, goals, cognitive scripts), emotional (e.g., anger, depression), and neuropsychological (attention deficits, hyperactivity).

Table 2

Problem Solving Steps for Linking Assessment with Intervention in the IAES

Problem Identification

1. *Review* all existing information available on the referred student to identify (a) the specific behavior that led to the disciplinary action and (b) additional existing problem behaviors.
2. *Collect additional information, as needed.* If additional information is needed to identify the above behaviors, gather such information using behavior checklists, observations, self-reports, and interviews with the student, parents, teachers, and peers, where appropriate.

Problem Analysis

3. *Develop hypotheses* that might explain the student's problem behaviors, including the behavior that led to disciplinary action. Hypotheses should include multiple factors that contribute to deficits in prosocial behavior and excesses in undesirable behavior, including intraindividual, peer, school, home, and community factors.
4. *Develop hypothesis-related questions* to guide the data gathering process and to confirm or reject the hypotheses (e.g., Does the behavior occur more often in unstructured settings? Do others reinforce the behavior? Does the student have social-cognitive, emotional, or behavioral deficits? Are medical issues addressed?).
5. *Administer multiple data gathering procedures*, as needed, to answer the hypothesis-related questions, to serve as baseline data, and to facilitate the link between assessment and intervention.
6. *Apply information gathered* from the student's previous settings and in the current IAES to confirm or reject the generated hypotheses.

Plan Development and Intervention

7. *Review and select interventions based on the above information.* Review research-supported interventions for decreasing behavior problems specific to the referred student. Interventions should match those hypotheses that have been confirmed. New interventions may need to be planned or the existing one modified. Necessary details regarding implementation of interventions are developed (Who implements what? Where? When? How?) and are implemented accordingly.

Plan Evaluation

8. *Monitor and evaluate* changes in behavior to determine the effectiveness of the interventions (e.g., increased prosocial behavior, decreased acts of aggression). Included would be strategies to promote the maintenance of the behavior over time and its generalization across settings.
9. *Revise* the student's behavioral intervention plan (and the IEP, where appropriate) based on results of the above steps.

Linking Assessment to Interventions for Social-Emotional/Behavior Problems

As discussed in Chapter 2, IDEA '97 requires that the IEP team consider the behavior that led to disciplinary action when developing or reviewing the positive behavioral intervention plan.

Following a "best practices" problem-solving approach, such as the one exemplified in Table 2, interventions should be individualized, based on the following:

- Data indicating the severity, frequency, and history of the student's behavior;
- Analysis of multiple factors that contributed to the behavior, including the presence or absence of those risk factors and protective factors that have been shown to be linked to behavior (see Table 3 for such factors related to aggression);
- Review of past and present interventions, including their effectiveness and the degree to which the interventions were implemented with fidelity;
- Review of research on the effectiveness of interventions for the targeted behaviors;
- Specific short-term (e.g., managing and controlling behavior) and long-term goals (e.g., teaching self-discipline); and
- Availability of school-based and community-based resources and supports that are needed to implement the recommended interventions (this would include an examination of anticipated obstacles and barriers that need to be addressed before and during implementation of interventions).

Table 3

Factors Related to Aggressive and Disruptive Behavior in the Classroom

I. INTRAINDIVIDUAL FACTORS

Behavioral Domain
- Behavioral excesses
- Behavioral deficiencies
- Externalizing and internalizing behaviors
- Poor communication skills
- Poor self-management skills, including poor impulse and control

Social-cognitive Domain
- Biased attributions of hostility
- Beliefs, values, and standards
- Social goal setting
- Perception of goal blocking, threat, or derogation to one's ego and esteem
- Self-efficacy beliefs
- Self-perceptions of competence/adequacy and social support
- Specific social problem solving skills
- Social perspective taking, interpersonal understanding, and negotiation strategies
- Distortions in moral reasoning

Emotional Domain
- Insensitivity, empathy
- Guilt and shame
- Pride
- Loneliness/Depression
- Anger
- Difficult temperament
- Self-concept

Health Domain
- Effects, and side effects, of medication
- Nutrition
- Sleep
- Attention-deficit disorder
- Alcohol and drug use
- Neuropsychological deficits (likely causes: maternal drug abuse; poor prenatal nutrition, pre- or postnatal exposure to toxic agents (e.g., lead), brain injury during delivery; genetically inherited differences; nutrition; lack of stimulation or affection; child abuse and neglect)
- Psychophysiological indicators such as low resting heart rate and low skin conductance
- High levels of testosterone
- Neurotransmitters, such as low CSF 5-HIAA

II. CLASSROOM/SCHOOL FACTORS
- Teacher/school expectations, goals, commitment
- Proactive classroom management
- Relationship between student(s) and teacher
- Physical environment
- Instructional skills (frequent repetition, pacing of instruction, etc.)
- Motivational strategies
- Disciplinary procedures used to correct behavior problems
- Curriculum (difficulty, length, practice, interest)
- Unfair rules and discipinary practices
- Student involvement and acceptability of discipline
- Degree of emphasis on external control, reinforcement vs. consequences
- Consistency in procedures across classes
- Building/district policies
- Class size, school size
- School atmosphere
- Availability of resources (within and outside of school)
- Home/school communication and collaboration
- Staff qualifications

III. HOME/COMMUNITY/PEER FACTORS
- Parenting style: Overly authoritarian, permissive, authoritative?
- Verbal/physical aggression in home or community
- Communication between parents and child
- Supervision and monitoring of behavior
- Different values/expectations between home/school
- Parental values, beliefs, and behaviors
- Family stressors (including drugs, alcohol, poverty, divorce, large family size)
- Lack of academic support
- Low parental expectations
- Steady diet of exposure to violent behavior on TV and video games
- Being a victim of aggression
- Availability of weapons
- Availability of drugs
- Community crowding, norms, and values
- Norms, values, beliefs among peers that support aggression
- Peer models
- Peer rejection

Note. From "Preventing School Problems-Promoting School Success. Strategies and programs that work," by K. M. Minke and G.G. Bear (Eds.) (p. 6). Bethesda, MD: National Association of School Psychologists. Reprinted with permission

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The majority of students placed into alternative educational programs have a history of behavior problems, consisting of everyday behaviors that interfere with learning and less frequent, yet more serious, behavior problems that led to their alternative placement. Unfortunately, reviews of research on the effectiveness of programs for these students tend to yield discouraging conclusions. Many programs have demonstrated short-term improvements in behavior (Stage & Quiroz, 1998), but few have demonstrated lasting improvements (Lipsey, 1992). For example, a meta-analysis of over 400 studies of programs for juvenile delinquents found that students in treatment groups had a recidivism rate that was only 10% lower than students in the control groups (Lipsey, 1992). However, the recidivism rate was 20% to 30% lower in some intervention groups, with students in these groups improving in social, emotional, academic, and vocational outcomes. Other reviews have yielded the same conclusion: *some programs for students with conduct disorders produce lasting improvements, but many others do not* (Bear, Furlong, Webster-Stratton, & Rhee, 2000; Gottfredson, 1997; Raywid, 1994).

Effective programs for students with conduct disorders, particularly those who are aggressive, tend to have certain characteristics in common (Blechman, Prinz, Dumas, 1996; Brewer, Hawkins, Catalano & Neckerman, 1995; Guerra, Tolan, & Hammond, 1994; Kazdin, 1994; Lipsey, 1992; Loeber & Farrington, 1998; Mash, 1998; Tolan & Guerra, 1994). In general, they are:

- *Comprehensive*, targeting multiple risk factors and protective factors;
- *Broad-based*, adopting a systems perspective toward understanding, preventing, and treating aggression;
- *Intensive and sustained over time*;
- *Sensitive to developmental differences* in behavior, the determinants of behavior, and the appropriateness of interventions; and
- *Emphasize the importance of early intervention*. This would include interventions provided at an early age, as well as interventions that are provided when indicators of behavior problems first appear. Table 4 presents early distress indicators associated with aggression and violence.

Table 4

Early Distress Indicators Associated with Aggressive Behavior, as Identified by The United States Department of Education (DOE), American Psychological Association (APA), and the National School Safety Center (NSSC)

Distress Indicators	DOE	APA	NSSC
Social withdrawal		•	•
Excessive feelings of isolation and being alone	•	•	
Excessive feelings of rejection	•	•	
Being a victim of violence	•	•	•
Feelings of being picked on and persecuted	•		
Low school interest and poor academic performance	•	•	
Expression of violence in writings and drawings	•		•
Uncontrolled anger	•	•	•
Patterns of impulsive and chronic hitting, intimidating, and bullying behaviors	•	•	
History of discipline problems and/or frequent run-ins with authority	•	•	•
Past history of violent and aggressive behavior or suicide attempts	•	•	•
Intolerance for differences and prejudicial attitudes	•		
Drug use and alcohol use	•	•	•
Affiliation with gangs or "fringe" groups	•	•	•
Inappropriate access to, possession of, and use of firearms	•	•	•
Serious threats of violence	•	•	•
Resorts to name calling, cursing, abusive language	•		
Preoccupied with weapons, incendiary devices, explosives	•		
History of truancy, suspensions, expulsions	•		
Displays cruelty to animals	•	•	
Little supervision from caring parent or adult	•		
Has been bullied or a victim of chronic bullying	•	•	
Blames others for problems he or she causes	•		
Consistently prefers media with violent themes or acts	•		
Prefers reading materials with violent themes, rituals, and abuse	•		
Often depressed or has significant mood swings	•		
Feeling constantly disrespected	•		
Failing to acknowledge the feelings or rights of others	•		

Note. From "Preventing School Problems-Promoting School Success: Strategies and Programs That Work," by K. M. Minke and G.G. Bear (Eds.) (p. 7). Bethesda, MD: National Association of School Psychologists. Reprinted with permission.

Effective programs for students with conduct disorders also tend to employ certain types of interventions. These interventions, which can be delivered either directly by the IAES or via interagency collaboration, can be grouped into four general categories, as described below.

1. **Parent-centered interventions,** such as the involvement of parents in the problem solving process that links assessment to intervention, and ongoing communication and collaboration with the home. This category includes parent education and management training, and/or family therapy.
2. **Student-centered interventions.** This category consists of interventions that teach specific prosocial and replacement behaviors or cognitive and emotional skills that underlie such behaviors. Included are interventions that teach social problem solving and conflict resolution skills, peer pressure resistance skills, anger management and impulse control, communication and interpersonal skills, social and moral reasoning, and empathy and social perspective taking. The above skills are taught using a combination of direct and indirect methods of instruction, including verbal instruction, discussion, readings, cooperative learning activities, role-playing, modeling, feedback, practice, and reinforcement.
3. **IAES- and school-centered interventions.** These interventions focus on maintaining a safe and orderly learning environment. Included are classroom-wide and IAES-wide practices for promoting prosocial behavior and for preventing and addressing inappropriate behavior, such as:
   - Clear rules, expectations, and policies designed to establish the norm of appropriate behavior;
   - Ongoing supervision and monitoring of behavior;
   - Using consistent and systematic behavioral techniques for increasing prosocial behavior and decreasing inappropriate behavior (e.g., behavioral contracting, level-systems, time-out, overcorrection, response cost, etc.);
   - Establishing student-staff relations that foster students' perceptions of a "community of support;"
   - Adopting security and supervision procedures, as necessary, that help ensure safe schools (e.g., security cameras, school resource officers).
4. **Community-centered interventions.** These interventions help connect students with community resources, such as vocational guidance and employment, drug and alcohol rehabilitation programs, clubs, church programs, medical and mental health resources and programs, and mentoring programs. An example is the Big Brothers/Big Sisters mentoring program, which has been shown to be effective in preventing drug use, decreasing behavior problems, and improving academic achievement (Grossman & Garry, 1997).

It should be noted that systematic and deliberate efforts to promote the generalization and maintenance of skills taught are critical to the success of all of the above interventions. Such efforts include teaching, practice, and reinforcement in multiple settings, including in the IAES classrooms, in counseling, at home, and in the school placement that follow the IAES. Consistent with these efforts, disciplinary encounters should be viewed as opportunities to *teach* self-discipline, not simply to punish behavior (Bear, 1998; Brophy, 1996).

Linking Assessment to Academic-Vocational Interventions

As discussed in Chapter 2 with respect to academic-vocational interventions, IDEA '97 requires that the IAES enable the student to:

- Progress in the general curriculum and
- Advance toward achieving the goals set out in the child's IEP.

In meeting these two requirements, the IAES staff and the IEP team should apply the "best practices" problem solving approach described in Table 2. Included should be features listed in the above section on linking assessment to social-emotional/behavioral interventions. As such, the student's IEP and general curriculum progress should be reviewed, with an emphasis on collecting and reviewing assessment data reflecting the effectiveness of curriculum and instruction in the academic-vocational area and its possible relation to the student's behavior problems. The IAES staff and the IEP team should examine the following factors in order to address the academic-vocational needs of the student in both the IAES and the setting that follows the IAES placement:

- The appropriateness of district-level expectations and standards for students without disabilities;
- The appropriateness of general texts and materials used by students without disabilities;
- The influence of additional factors on the student's academic-vocational performance, including intraindividual factors (e.g., frustration, motivation, ability, attending skills, etc.), peer, home, community, and additional school factors; and
- The need for modifications and adaptations in curriculum and instruction, as well as other interventions that might improve academic-vocational performance.

Academic-vocational interventions should be guided by research on effective teaching. Such research has identified general characteristics of effective classrooms, as well as more specific characteristics of effective instruction for at-risk students and students with disabilities (Ysseldyke & Christenson, 1994). Drawing from such research, the IAES staff and IEP team should review the extent to which the following general characteristics of effective classrooms and teaching are present in the IAES, as well as in the setting to which the student will return:

- Classroom management and disciplinary practices that combine proactive, corrective, and instructive strategies;
- Use of a variety of methods of instruction;
- High academic expectations;
- Use of developmentally appropriate and motivating materials;
- Active student participation in academic-vocational planning;
- Student accountability for work completion;
- Cooperative learning activities;

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- Classroom climate characterized by a positive relationship with the teacher and peers;
- Collaboration/coordination with the home (Brophy & Good, 1999).

In addition to the general characteristics above, research shows that effective teachers employ teaching strategies commonly associated with the *direct instruction* model of teaching. Direct instruction emphasizes the systematic monitoring, recording, and assessment of achievement (Reynolds, Wang, & Walberg, 1992). The teaching components of direct instruction include:

- Frequent practice and feedback;
- Clear and detailed instructions;
- Quick pacing;
- High student involvement;
  Use of concrete examples;
- High rates of success, especially during the initial stages of learning; and
- Overlearning.

Research also has highlighted the importance of *adaptive instruction* when working with students with disabilities (Waldron, 1998; Waxman, Wang, Anderson, & Walberg, 1985). Adaptive instruction is characterized by:

- Close alignment between instruction, curriculum, prescribed outcomes, evaluation measures, and the student's needs;
- Emphasis on the teaching of functional skills, including vocational and daily living skills, where appropriate;
- Pre-teaching of critical vocabulary and frequent use of advanced organizers;
- Highlighting and repeating key concepts (e.g., using study guides, overhead transparencies, etc.);
- Presenting information in multiple formats (written, orally, video, audio tapes, games, etc.);
- Presenting clear samples of work products that are expected from the student;
- Allowing students to demonstrate mastery in different ways;
- Providing extra time to learn material and to complete projects and tests;
- Breaking instruction into smaller units and shorter assignments;
- Providing for frequent practice of skills learned, including practice at home;
- Allowing for cooperative learning, especially peer tutoring; and
- Providing modified tests and grading.

The essence of special education is instruction matched to particular needs.
(Kavale & Forness, 1999, p. 984)

Summary

As demonstrated in this chapter, a wealth of research exists in general education, special education, educational psychology, and school psychology to help guide educators in the development and implementation of educational programs for IAESs. Readers are referred to the references and recommended resources at the end of this document for further information on the topics presented.

Future Challenges

Multiple legal and practical challenges to IAESs are likely to emerge in the near future. Among the legal challenges will be those concerning the current lack of clarity in the regulations, such as:

- The types of programs that constitute an adequate IAES. When is a homebound setting sufficient? Can a restricted setting, such as a mental health facility, constitute an IAES?
- What defines "proximity and a pattern of removal," which must be considered in repeated placements of students in IAESs that extend beyond 10 school days in the same school year? Under what, if any, conditions can this provision result in a student being placed in an IAES that does not differ from a more permanent educational setting?
- What constitutes a valid manifestation determination?
- What comprises an appropriate functional behavioral assessment and how can it be conducted sufficiently outside the context of the setting in which the behavior leading to disciplinary action occurred?

These and other legal challenges remain to be addressed in government and court rulings.

Perhaps the greatest challenge to IAESs will not be developing intervention plans that should work, but addressing dilemmas, obstacles, and barriers related to their implementation. Dilemmas likely to emerge include the following:

1. The intervention plan, including modifications to the existing plan, is limited to the student's current IEP and the parents are unwilling to agree to any changes. In such cases, persistent attempts to obtain parent permission should be sought. Although the parent may not have agreed to a change in placement (thus, resulting in the IAES placement), it is likely that parents will be less resistant to changes in curriculum and instruction, especially when such changes are designed to prevent problem behaviors from recurring.
2. Resistance is encountered in the implementation of the intervention plan. Such resistance is likely to come from parents, the student, or from teachers and administrators in the setting following the IAES. Knowledge of the multiple sources of resistance and skills in preventing and overcoming resistance will be needed, especially on part of IAES staff responsible for the student's transition.
3. The student prefers the IAES over his/her previous setting and thus is reluctant to return to the previous setting. Such a scenario is likely to be common in effective

IAESs, reflecting the need for the IAES to emphasize transitional planning including follow-up consultative and supportive services.

4. The student's behavior problems are too severe to be addressed in the IAES in which the student is placed (e.g., the student is a threat to self or others in the IAES). To help avoid this problem staff need training in a broad range of mental health interventions, including crisis intervention. Perhaps more importantly, a continuum of IAES placements and special education placements must be available.

Despite these and many more challenges, the provision for IAESs in IDEA '97 provides schools with a valuable means of helping to ensure the safety and order in schools while protecting the rights of students with disabilities to a free appropriate public education. The adoption of a "best practices" problem-solving approach to IAES services and programs, as outlined in this document, should help schools plan and implement interventions that not only help ensure students' safety and legal rights, but also help ensure their effectiveness in bringing about lasting and meaningful improvements in the behavior of those students who present the most serious challenges to today's educators.

Recommended Resources

Agencies and Organizations

ASPIIRE and its Primary Partners

ASPIIRE - Associations of Service Providers Implementing IDEA Reforms in Education
Council for Exceptional Children
1110 North Glebe Road, Suite 300, Arlington, VA 22201-5704
(p) 877-CEC-IDEA (TDD) 866-915-5000 (f) 703-264-1637
www.ideapractices.org

AFT - American Federation of Teachers
555 New Jersey Avenue, NW, Washington, DC 20001
(p) 202-897-4400
www.aft.org

AOTA - American Occupational Therapy Association
4720 Montgomery Lane, P.O. Box 31220, Bethesda, MD 20824-1220
(p) 301-652-AOTA (TDD) 800-377-8555 (f) 301-652-7711
www.aota.org

ASHA - American Speech-Language-Hearing Association
10801 Rockville Pike, Rockville, MD 20852
(p/TDD) 800-638-8255 (f) 301-897-7355
www.asha.org

ACTE - Association for Career and Technical Education
1410 King St., Alexandria, VA 22314
(p) 800-826-9972 (f) 703-683-7424
www.acteonline.org

DEC - Division for Early Childhood
Council for Exceptional Children
1380 Lawrence Street, Suite 650, Denver, CO 80204
(p) 303-556-3328 (f) 303-556-3310
www.dec-sped.org

NASP - National Association of School Psychologists
4340 East West Highway, Suite 402, Bethesda, MD 20814
(p) 301-657-0270 (f) 301-657-0275
www.nasponline.org

NEA - National Education Association
1201 16th Street, NW, Washington, DC 20036
(p) 202-833-4000 (f) 202-822-7482
www.nea.org

Additional Organizations That Provide Information Related to IAESs

American Psychological Association
750 First Street, NE, Washington, DC 20002-4242
(p) 202-336-5500 (f) 202-336-5502
www.apa.org

Americans with Disabilities Act Information Center
451 Hungerford Drive, Suite 607, Rockville, MD 20850
(p) 800-949-4232 (f) 301-217-0754
www.adainfo.org

Center for Effective Collaboration and Practice
American Institutes for Research
1000 Thomas Jefferson Street, NW, Washington, DC 20007
(p) 888-457-1551 (TDD) 877-334-3499 (f) 202-944-5454
www.air.org/cecp/

Center for Mental Health in Schools
Department of Psychology
P.O. Box 951563
Los Angeles, CA 90095-1563
(p) 310-825-3634 (f) 310-206-8716
http://smhp.psych.ucla.edu

Center for the Prevention of School Violence
313 Chapanoke Road, Suite 140, Raleigh, NC 27603
(p) 800-299-6054 (f) 919-773-2904
www.ncsu.edu/cpsv/

CASEL - Collaborative to Advance Social and Emotional Learning
Department of Psychology - University of Illinois at Chicago
1007 West Harrison Street, Chicago, IL 60607-7137
(p) 312-413-1008 (f) 312-355-4480
www.CASEL.org

Consortium for Appropriate Dispute Resolution in Special Education
P.O. Box 51360, Eugene, OR 97405-0906
(p) 541-686-5060 (f/TDD) 541-686-5063
www.directionservice.org/cadre/

Counseling and Student Services Clearinghouse
ERIC - Education Resource Information Center
201 Ferguson Building, PO Box 26171, Greensboro, NC 27402-6171
(p) 800-414-9769 (f) 336-334-4116
http://ericcass.uncg.edu

National Council on Disability
1331 F Street, NW, Suite 1050, Washington, DC 20004-1107
(p) 202-272-2004 (TDD) 202-272-2074 (f) 202-272-2022
www.ncd.gov

National Dropout Prevention Center
Clemson University
209 Martin Street, Clemson, SC 29631-1555
(p) 864-656-2599 (f) 864-656-0136
www.dropoutprevention.org

National Information Center for Children and Youth with Disabilities
P.O. Box 1492, Washington, DC 20013-1492
(p/TDD) 800-695-0285 (f) 202-884-8441
www.nichcy.org

National Institute on the Education of At-Risk Students
U.S. Department of Education
OERI/At-Risk, Room 610, 555 New Jersey Ave., NW, Washington, DC 20208-5521
(p) 202-219-2239 (f) 202-219-2030
www.ed.gov/offices/OERI/At-Risk/

National Mental Health and Education Center
National Association of School Psychologists
4340 East West Highway, Suite 402, Bethesda, MD 20814
(p) 301-657-0270 (f) 301-657-0275
www.naspcenter.org

National Resource Center for Safe Schools
101 SW Main Street, Suite 500, Portland, OR 97204
(p) 800-268-2275 (f) 503-275-0444
www.safetyzone.org

Office of Juvenile Justice and Delinquency Prevention
810 Seventh Street, NW, Washington, DC 20531
(p) 202-307-5911 (f) 202-307-2093
www.ojjdp.ncjrs.org

Positive Behavioral Interventions and Supports
5262 University of Oregon, Eugene, OR 97403-5262
(p) 541-346-2505 (f) 541-346-5689
www.pbis.org

Safe and Drug Free Schools Program
400 Maryland Avenue, SW, Room 3E314, Washington, DC 20002
(p) 202-260-3954 (f) 202-260-7767
www.ed.gov/offices/OESE/SDFS/

Safe Schools/Healthy Students Action Center
National Mental Health Association
1021 Prince Street, Alexandria, VA 22314-2971
(p) 877-339-7747
www.sshac.org

Substance Abuse and Mental Health Service Administration
Office of Program Services
5600 Fishers Lane, Rockville MD 20857
(p) 301-443-3875 (f) 301-443-0247
www.samhsa.gov

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Appendix A

Case Studies

Case Study #1: Scott

Scenario:

Scott is a 14-year-old middle school student with an emotional disturbance. As a result of his disability, Scott has received special education services for five years. He has a history of paranoid-like episodes and unpredictable emotional responses in a variety of settings. After overhearing part of a conversation between classmates, Scott assumed the conversation was about him. He went home, brooded all evening, and came to school the next day carrying a gun. His friend, Mike, saw the bulge under his jacket and asked what it was. When Scott became very secretive and mumbled something about "taking care of people who make fun of me," Mike decided to tell their homeroom teacher, who reported Scott's comment to the office.

Scott was brought to the office where the school resource officer talked with him and found the gun. Scott was immediately isolated from other students, searched to make sure that there were no other weapons or devices, and kept under supervision while his parents, the school superintendent, and the police were notified. Following the incident, Scott was sent home for the rest of the day and was then reassigned to an interim placement in an alternative middle school for students exhibiting a variety of behavioral difficulties. The setting serves both regular and special education students.

Assessment and Intervention Activities

A functional behavioral assessment was initiated and the IEP team met to determine if the behavior was a manifestation of Scott's disability. At the meeting, it was determined that Scott's behavior was a manifestation of his disability. Therefore, the length of his stay in the interim setting was set at a maximum of 45 calendar days. The IEP team also recommended a re-evaluation, including an evaluation of his medication needs, and that the team meet again to determine the appropriateness of Scott's previous placement. It was also determined that an IEP meeting would be held to determine if his previous setting was appropriate. The IEP team recommended a re-evaluation and a medication evaluation. Because Scott's placement could not exceed the maximum 45-day limitation for an interim setting without a ruling by a hearing of-

ficer (or with a court order), the IEP team requested that the evaluations be conducted immediately in order not to exceed the 45-calendar day limit.

The personnel in the interim setting participated in the re-evaluation by reviewing previous records, conducting a curriculum-based assessment and completing teacher rating scales covering both behavioral and academic observations (scales also were completed by teachers in the previous setting). They found that Scott was appropriately placed in his regular math and science classes and his special education English class. As in his previous setting, Scott needed some additional assistance with his social studies class. A social worker updated the sociocultural report and found that Scott had been insisting on monitoring his own medication schedule and his parents were unsure whether he had been taking his medication regularly. During the medical visit the physician decided to try a new medication regimen and insisted that Scott's parents be in charge of this procedure.

During his placement, the school psychologist evaluated Scott's social and emotional functioning. Initially, Scott was very suspicious and defensive, but he gradually showed improvement. However, the school psychologist continued to note several behaviors that suggested that Scott continued to experience periods of distorted thoughts and perceptions. Prior to the 45-day limit, an eligibility meeting was held to determine whether Scott continued to qualify for special education services. After finding him eligible for continued services, an IEP meeting was held. Although Scott had demonstrated some positive adjustment to the new medication and to his new setting, Scott refused to reveal how and from whom he had gotten the gun.

In addition, Scott's parents could not assure the school that he would continue to cooperate with the medication and the school psychologist noted concerns regarding Scott's continuing thought disorder patterns. Therefore, the IEP team determined that Scott's previous setting was not appropriate and recommended that a residential placement be found that could address Scott's thought disorder as well as emotional and behavioral concerns. Because it would take more time to locate an appropriate setting, the school asked his parents to agree to a new IEP continuing the placement in the interim setting. Fearing that this would continue indefinitely, the parents refused to agree to the new IEP. A hearing officer was appointed to determine whether the interim placement could be extended. The hearing officer found that this was in the best interests of both Scott and the school system to continue the placement. However, he also made it clear that the school system needed to begin the search for a residential setting immediately and that it was unlikely that a second extension would be granted. He ordered that Scott receive psychiatric services in the interim setting. No changes in the academic services were needed.

Case Study #2: Jennifer

Scenario

Jennifer is a 16-year-old student who has received special education services for a specific learning disability in math that was diagnosed when she was in third grade. She is dating a first-year college student from a nearby community college who has a history of drug involvement. After a weekend date, Jennifer arrived at school on Monday morning and bragged to a classmate, Andrea, that she still had some of her boyfriend's "coke" with her and offered to show/share it. Andrea took the small baggie and disappeared down the hallway. Jennifer wondered what she was going to do with it but then shrugged it off and went to class. Later that day Andrea and some friends were discovered in the girls' bathroom snorting the drug. Andrea identified Jennifer as her "supplier" and Jennifer was called to the office. Initially, she denied knowing anything about the drugs but finally told the whole story. All of the students were suspended for 10 consecutive school days and referred to the school board for a hearing. Because the school board did not meet for another 12 days after that, Jennifer was assigned to the school's long-term suspension center, which also functioned as an IAES, until the board meeting.

Assessment and Intervention Activities

During the 10-day suspension, a functional behavioral assessment was completed and a manifestation hearing was held. (The police had determined that the white powder was cocaine and charges against the involved parties, including Jennifer, had been placed.) It was determined that Jennifer's actions were not a manifestation of her disability. The IEP team met and determined that her IEP was appropriate. Input from the IAES after the 10-day suspension supported the academic findings. For the 12 days Jennifer was in the IAES she continued to receive the regular and special education services outlined in her IEP.

When the school board met, they found that all of the parties involved had previous records of drug experimentation. They held that the state statute mandating a 365-day expulsion was appropriate. The regular education students were expelled from school for 365 days. Jennifer was assigned to continue in the same setting that served as the IAES while awaiting the decision for the completion of her 365-day expulsion due to her special education status. The board also supported the police and court requests for school records, including discipline logs for these students once proper procedures for disclosure of education records under the Families Educational Rights and Privacy Act were met.

Case Study #3: Ricky

Scenario

Ricky was a 12-year-old, sixth-grade student who was identified as having ADHD in pre-school. After experiencing a very difficult adjustment to kindergarten and first grade, he was found eligible for services as Other Health-Impaired because his impulsivity, hyperactivity, and attention difficulties were found to severely interfere with his ability to manage in a school setting. For most of his elementary experience, Ricky was served in a self-contained setting. This is his first year in a middle school that utilizes an inclusion model for the delivery of special education services. Ricky has been completely overwhelmed and unable to cope. The IEP team has met several times and has made adjustments to his schedule but his difficulties have continued. A number of his teachers have noticed that he is becoming more and more isolated, off-task, and anxious.

One morning his English teacher brought his journal to the school principal to ask if she needed to be concerned about his entry the day before. Ricky had written in his journal about a boy whose life had become so confusing that he finally gave up. He then described how the boy took his brother's hunting rifle into the woods one evening and shot himself. The story described how badly his classmates felt because they had ridiculed him; his teachers were sorry they had not helped him; and his parents reserved the largest church in town so everyone could come to his funeral.

The principal checked the attendance and found that Ricky was not in school. He called Ricky's home and was told that Ricky had left for school as usual that morning. A call was placed to the police and an immediate search was started. Ricky was located by a patrol car walking toward the national forest just outside of town. He was carrying his father's hunting rifle.

Assessment and Intervention Activities

Ricky was taken to the local mental health center for screening and was placed in a hospital setting for an evaluation. Ricky continued to maintain that he had just gotten up that morning and "felt like going hunting." He denied any relationship between his short story in his journal and his decision to go hunting. The hospital released him to his parents' custody. When his parents called to ask whether Ricky could return to school, the principal informed them that they needed to hold an IEP meeting first.

An emergency IEP meeting was held the next afternoon. A functional behavioral assessment had been completed prior to the meeting. Information developed during the assessment indicated that Ricky had exhibited a pattern of increasing social isolation, increased agitation and irritability, and increased impulsivity/hyperactivity in the school setting. Although his parents would not acknowledge similar patterns at home, they did agree that his new setting was very stressful for him. The school counselor shared the fact that Ricky had talked about suicide several times that fall and that she

had discussed these incidents with his parents. When questioned, Ricky's parents indicated that they felt it was just part if his adjustment to middle school and expressed the opinion that "most middle school kids talk about suicide at some point."

Ricky's special education teacher recommended that Ricky be assigned to the regional alternative school in which their school system participates. The setting provides small classes, flexibility in terms of the amount of time he can be assigned to the special education teacher there, and mental health services provided by a licensed provider. She felt that it would provide him the advantages of a more restricted setting while allowing him to continue with both regular and special education services.

Ricky's parents, however, did not want the stigma that they felt would be associated with a placement at the regional alternative school, which served both as an interim and a long-term setting. The school system attempted to mediate but was unable to come to an acceptable agreement with them. Finally, they requested that a hearing officer be appointed to determine the appropriate educational placement.

During the hearing, school and mental health personnel maintained that Ricky presented as a high-risk candidate for a suicide attempt. They indicated that Ricky had no viable support system at the middle school despite their varied attempts to meet his needs there. Ricky's rejection of their efforts and his increasing level of stress there continued to undermine the school's efforts to establish a safe and nurturing environment for him. They identified the services that would be available at the regional alternative school and noted the school's positive track record in working with students similar to Ricky. The attorney for Ricky's parents insisted that the school was exaggerating the situation and noted that the hospital had released him after only 24 hours.

The hearing officer found that Ricky did present a danger to himself in the large middle school with its inclusion model of services. He ordered that Ricky be placed in the regional alternative setting for 45 days. He also indicated that he would continue to extend the 45-day placements if necessary to maximize Ricky's safety. He ordered that mental health services be provided and that regular reports be submitted to him so that he could be apprized of Ricky's adjustment and progress in the new setting. Ricky's IEP was revised to reflect the findings of the hearing officer.

Appendix B

IDEA '97 Regulations Pertaining to IAES

§300.519 Change of placement for disciplinary removals.

For purposes of removals of a child with a disability from the child's current educational placement under §§300.520-300.529, a change of placement occurs if-

(a) The removal is for more than 10 consecutive school days; or

(b) The child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

(Authority: 20 USC 1415(k))

§300.520 Authority of school personnel.

(a) School personnel may order-

(1)(i) To the extent removal would be applied to children without disabilities, the removal of a child with a disability from the child's current placement for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.519(b));

(ii) After a child with a disability has been removed from his or her current placement for more than 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under §300.121(d); and

(2) A change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if -

(i) The child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or

(ii) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

§300.520 Authority of school personnel. (continued)

(b)(1) Either before or not later than 10 business days after either first removing the child for more than 10 school days in a school year or commencing a removal that constitutes a change of placement under §300.519, including the action described in paragraph (a)(2) of this section-

(i) If the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal described in paragraph (a) of this section, the agency shall convene an IEP meeting to develop an assessment plan.

(ii) If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior.

(2) As soon as practicable after developing the plan described in paragraph (b)(1)(i) of this section, and completing the assessments required by the plan, the LEA shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

(c)(1) If subsequently, a child with a disability who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than 10 school days in a school year is subjected to a removal that does not constitute a change of placement under §300.519, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.

(2) If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

(d) For purposes of this section, the following definitions apply:

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC 812(c)).

(2) Illegal drug-
(i) Means a controlled substance; but

(ii) Does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

(Authority: 20 USC 1415(k)(1), (10))

§300.521 Authority of hearing officer.

A hearing officer under section 615 of the Act may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing -

(a) Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;

(b) Considers the appropriateness of the child's current placement;

(c) Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

(d) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher, meets the requirements of §300.522(b).

(e) As used in this section, the term substantial evidence means beyond a preponderance of the evidence.

(Authority: 20 USC 1415(k)(2), (10))

§300.522 Determination of setting.

(a) General. The interim alternative educational setting referred to in §300.520(a)(2) must be determined by the IEP team.

(b) Additional requirements. Any interim alternative educational setting in which a child is placed under §§300.520(a)(2) or 300.521 must-

(1) Be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

(2) Include services and modifications to address the behavior described in §§300.520(a)(2) or 300.521, that are designed to prevent the behavior from recurring.

(Authority: 20 USC 1415(k)(3))

§300.523 Manifestation determination review.

(a) General. If an action is contemplated regarding behavior described in §§300.520(a)(2) or 300.521, or involving a removal that constitutes a change of placement under §300.519 for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children-

§300.523 Manifestation determination review. (continued)

(1) Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and provided the procedural safeguards notice described in §300.504; and

(2) Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

(b) Individuals to carry out review. A review described in paragraph (a) of this section must be conducted by the IEP team and other qualified personnel in a meeting.

(c) Conduct of review. In carrying out a review described in paragraph (a) of this section, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team and other qualified personnel -

(1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including-

(i) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the child;

(ii) Observations of the child; and

(iii) The child's IEP and placement; and

(2) Then determine that -

(i) In relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(ii) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(iii) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

(d) Decision. If the IEP team and other qualified personnel determine that any of the standards in paragraph (c)(2) of this section were not met, the behavior must be considered a manifestation of the child's disability.

(e) Meeting. The review described in paragraph (a) of this section may be conducted at the same IEP meeting that is convened under §300.520(b).

(f) Deficiencies in IEP or placement. If, in the review in paragraphs (b) and (c) of this section, a public agency identifies deficiencies in the child's IEP or placement

or in their implementation, it must take immediate steps to remedy those deficiencies.

(Authority: 20 USC 1415(k)(4))

§300.524 Determination that behavior was not manifestation of disability.

(a) General. If the result of the review described in §300.523 is a determination, consistent with §300.523(d), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in §300.121(d).

(b) Additional requirement. If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(c) Child's status during due process proceedings. Except as provided in §300.526, §300.514 applies if a parent requests a hearing to challenge a determination, made through the review described in §300.523, that the behavior of the child was not a manifestation of the child's disability.

(Authority: 20 USC 1415(k)(5))

§300.525 Parent appeal.

(a) General.

(1) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement under §§300.520-300.528, the parent may request a hearing.

(2) The State or local educational agency shall arrange for an expedited hearing in any case described in paragraph (a)(1) of this section if a hearing is requested by a parent.

(b) Review of decision.

(1) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements of §300.523(d).

(2) In reviewing a decision under §300.5.)(a)(2) to place the child in an interim alternative educational setting, the he ring officer shall apply the standards in §300.521.

(Authority: 20 USC 1415(k)(6))

§300.526 Placement during appeals.

(a) General. If a parent requests a hearing or an appeal regarding a disciplinary action described in §300.520(a)(2) or 300.521 to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in §300.520(a)(2) or 300.521, whichever occurs first, unless the parent and the State agency or local educational agency agree otherwise.

(b) Current placement. If a child is placed in an interim alternative educational setting pursuant to §300.520(a)(2) or 300.521 and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in paragraph (c) of this section.

(c) Expedited hearing.

(1) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing.

(2) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in §300.521.

(3) A placement ordered pursuant to paragraph (c)(2) of this section may not be longer than 45 days.

(4) The procedure in paragraph (c) of this section may be repeated, as necessary.

(Authority: 20 USC 1415(k)(7))

§300.527 Protections for children not yet eligible for special education and related services.

(a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in §§300.520 or 300.521, may assert any of the protections provided for in this part if the LEA had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge. An LEA must be deemed to have knowledge that a child is a child with a disability if -

(1) The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;

(2) The behavior or performance of the child demonstrates the need for these services, in accordance with §300.7;

(3) The parent of the child has requested an evaluation of the child pursuant to §§300.530-300.536; or

(4) The teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel in accordance with the agency's established child find or special education referral system.

(c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if, as a result of receiving the information specified in that paragraph, the agency-

(1) Either-

(i) Conducted an evaluation under §§300.530-300.536, and determined that the child was not a child with a disability under this part; or

(ii) Determined that an evaluation was not necessary; and

(2) Provided notice to the child's parents of its determination under paragraph (c)(1) of this section, consistent with §300.503.

(d) Conditions that apply if no basis of knowledge.

(1) General. If an LEA does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.

(2) Limitations.

(i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under §300.520 or 300.521, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, including the requirements of §§300.520-300.529 and section 612(a)(1)(A) of the Act.

(Authority: 20 USC 1415(k)(8))

§300.528 Expedited due process hearings.

(a) Expedited due process hearings under §§300.521-300.526 must-

(1) Meet the requirements of §300.509, except that a State may provide that the time periods identified in §§300.509(a)(3) and §300.509(b) for purposes of expedited due process hearings under §§300.521-300.526 are not less than two business days; and

(2) Be conducted by a due process hearing officer who satisfies the requirements of §300.508.

(b)(1) Each State shall establish a timeline for expedited due process hearings that results in a written decision being mailed to the parties within 45 days of the public agency's receipt of the request for the hearing, without exceptions or extensions.

(2) The timeline established under paragraph (b)(1) of this section must be the same for hearings requested by parents or public agencies.

(c) A State may establish different procedural rules for expedited hearings under §§300.521-300.526 than it has established for due process hearings under §300.507.

(d) The decisions on expedited due process hearings are appealable consistent with §300.510.

(Authority: 20 USC 1415(k)(2), (6), (7))

§300.529 Referral to and action by law enforcement and judicial authorities.

(a) Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b)(1) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

(Authority: 20 USC 1415(k)(9))

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